WATERS—APPROPRIATION FOR IRRIGATION—RIGHTS OF RIPARIAN OWNERS.—This action was first instituted by the plaintiff, Hough, and another to restrain defendant, Porter, from interfering with the flow of water in a creek to which the land of plaintiff, Hough, is riparian. Defendant, Porter, claimed his interference was of right, on the ground of prior appropriation. *Held,* the desert land act (U. S. Comp. St. 1901, p. 1548) abrogated the modified doctrine of riparian rights as to public lands entered since its enactment, and allows the person who first appropriates and diverts water for use in irrigation, manufacturing, or mining the better right to use the water for those purposes. *Hough et al.* v. *Porter et al.* (1909), — Ore. —, 98 Pac. 1083.

For a long time the far western states have discarded the riparian rights theory as inapplicable to western conditions. However, many of these states have hesitated to leap from the common law rule,—that every riparian owner is entitled to the natural flow, undiminished in quantity and without deterioration in quality, of the stream to which his land is riparian,—to the rule born of the necessities of the Californian miner,—that he who first appropriates, diverts, and puts the waters of a running stream to a reasonable use thus acquires the prior and exclusive right to such use. Oregon has been one of the states that has taken the middle ground and stood for the so-called modified doctrine of riparian rights. *Low* v. *Schaffer,* 24 Ore. 239; *Coffman* v. *Robbins,* 8 Ore. 278. The principal case, while based upon the acts of Congress of 1866 and 1877 (U. S. Comp. St. 1901, p. 1437 and p. 1548), and strictly applicable only to public lands acquired since 1877, shows that Congress has seen fit to overlook the doctrine of modified riparian rights and adopt the prior appropriation theory. The water rights of over fifty persons were involved in the principal case. Commissioner King in 95 Pac. 732, when the case first appeared before the supreme court, intimated that if the distribution of water in this instance had to be made under the modified riparian rights theory it would present a serious task. The two theories, that of riparian rights and that of prior appropriation, seem to be diametrically opposed. The principal case appears to be a step towards the adoption of the strict rule of prior appropriation.

WILLS—TESTAMENTARY CAPACITY—MONOMANIA.—For twenty or twenty-five years prior to his death testator was an enthusiastic follower of Swedenborg, spending much of his time and money in advocacy of Swedenborgian thought and the dissemination and distribution of the tracts and writings of Emanuel Swedenborg. The evidence showed that the Swedenborgian dogmas dominated the testator's mind and thought, intruded themselves into his business and social relations and for twenty years prior to his decease it was impossible for him to engage in conversation without intermingling the teachings and tenets of Swendenborg. He would accost people on the street, in the stores, at his office, and in his home, strangers and acquaintances alike, "young and old, those of high and lowly station," and urge upon them the acceptance of his views as long as he could get a hearing. He would call upon his own skilled employees during working hours, request them to suspend their work and give him a hearing for two or three